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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/053,832	04/01/1998	WILLIAM M. OWENS	28.733	1786

7590 04/09/2002

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EXAMINER
GOODMAN, CHARLES

ART UNIT	PAPER NUMBER
3724	22

DATE MAILED: 04/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/053,832	Applicant(s) OWENS, WILLIAM M.	
	Examiner Charles Goodman	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 January 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *9-13 and 15-32* is/are pending in the application.

4a) Of the above claim(s) *9-13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-32* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. The Request for Reconsideration filed on January 25, 2002 has been received and acknowledged. The following is a result thereof.

Election/Restrictions

2. Claims 9-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species II, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Specification

3. The disclosure is objected to because of the following informalities:

i. P. 3, ll. 18-21, the use of the trademarks "Scandera Red Carbox Rough Top" and "Browning Manufacturing Company" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

ii. P. 5, l. 13, the phrase "spring or pneumatic cylinder loaded arm (12, 18, 20, 45)" is not clearly understood. References "12" and "45" have been used to designate a "spring loaded arm", and now they are referred to as a "pneumatic cylinder loaded arm". Which is which? If the arms 18, 45 can also be "pneumatic cylinder", then it is suggested that this alternative be

set forth during the first instance of the references so that the specification is clear.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 28-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

i. Claim 28 is vague and indefinite in that it is not clear what feature the phrase "which travels in the working direction" is referring to. The way the claim reads, the phrase appears to be referring to the "work bed" which, as disclosed, does not travel.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 15, 18, 22, and 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers in view of Baranski.

Chambers discloses the invention substantially as claimed except that Chambers does not show a pair of input-side and output-side pulleys for the input conveyors (10)

and the output conveyors (20). Chambers also lacks a groove and strip. However, Baranski teaches an example of a well know conveyor comprising a pair of input side and output side pulleys (126, 128), an endless belt having a non-skid upper surface and a guiding strip (156), the pulleys each having a circumferential groove (122, 124) sized and shaped to match the strip, and a work bed (114) having another groove (120) also sized and shaped to match the strip wherein the belt positively feeds material through a processing unit without any lateral deviation of the belt due to the strip riding in the grooves. See Figs. 4-5, c. 4, l. 22-68. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device and method of Chambers with the conveyor arrangement as taught by Baranski for each of the input and output conveyors in Chambers in order to facilitate positive feeding guidance of the material without concerns of any undesirable lateral movement of the endless belt means during the operation thereof.

Regarding the "adapted to" language in the claims, they have not been given significant patentable weight, since it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

8. Claims 16, 17, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers in view of Baranski as applied to claims 15, 18, 22, and 25-32 above, and further in view of Zimmerman.

Regarding claim 16, the modified device of Chambers discloses the invention substantially as claimed except that Chambers lacks specific details of driving the

respective conveyors, i.e. driving of certain pulleys by a single power unit. However, Zimmerman teaches that driving of conveyors by a single power unit is a well known driving means in the art. More specifically, Zimmerman teaches a power unit (44) driving the input-side pulley (e.g. at 40c) of the output conveyor (36) and the output-side pulley (e.g. at 40d) of the input conveyor (38) wherein the other pulleys of the respective pairs are passively driven by the driven pulleys and further wherein positively driven pulleys are driven at the same speed so as to feed the material through the processing unit at a uniform rate. Fig. 3. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Chambers with the conveyor driving arrangement as taught by Zimmerman in order to facilitate a simple drive for uniform rate of movement of the material through the processing apparatus.

Regarding claim 23, the modified device of Chambers discloses the invention substantially as claimed except for at least one hold-down member. However, both Baranski and Zimmerman teach that hold-down members are old and well known in the art to facilitate clamped feeding engagement of the material being fed. Note the hold down member 98 in Figs. 1 and 4, c. 4, l. 59 - c. 5, l. 18, in Zimmerman. Note the hold down members 86 in Fig. 3 of Baranski. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Chambers with the hold down members as taught by Baranski and Zimmerman combined in order to facilitate clamped feeding engagement of the material being processed.

9. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers in view of Baranski as applied to claims 15, 18, 22, and 25-32 above, and further in view of Conrad.

The modified device of Chambers discloses the invention substantially as claimed except for a plurality of V-shaped notches. However, this feature is obvious for the following reasons.

First, as noted in the last Office Action, the belts with the notch grips has been disclosed as a commercially available belt. For this reason alone, this feature is obvious.

Second, in the alternative, Conrad teaches an endless belt wherein the belt includes guide V-shaped notches (e.g. 34) for the purpose of maximizing the flex of the belt while inherently preventing lateral movement thereof. See c. 1, ll. 61-65. Moreover with respect to the negative limitation "without contacting with...", this is deemed to be an obvious matter of design choice. There is nothing in the specification that places any criticality to how far the notches extend in the lower surface, i.e. it does not solve any stated problem or serve a particular function outside of the inherent lateral movement preventing function. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Chambers with V-shaped notches as taught by Conrad in order to maximize the flex experienced by the conveyor belt means during movement thereof. Moreover, it would have been obvious to the ordinary artisan to have the notches extend toward but not touch the lower surface which would provide a slightly more stiff character to the belt, since this is deemed to be an obvious matter of design choice as noted *supra*, and since such a modification would have involved a mere change in the size and/or shape of a component. A change in size

and/or shape is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Response to Arguments

10. Applicant's arguments filed January 25, 2002 have been fully considered but they are not persuasive.

In response to Applicant's basic argument that claim 28 is definite, this argument is traversed. Applicant does not explain how the claim is definite. Moreover, Applicant does not address how the Examiner erred in the indefiniteness determination. Thus, the rejection still stands.

In response to Applicant's argument that there is no suggestion to combine the references,[1] the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the suggestion to combine stem from both references. Chambers clearly teaches conveyors but lacks details of the conveyors relating to the pulleys. However, Baranski clearly teaches an equivalent conveyor means comprising the lacking features in Chambers which facilitate positive feeding guidance of the work. Thus, it would have been obvious to the ordinary artisan

at the time of the instant invention to provide Chambers with the conveyor pulleys as taught by Baranski for the reasons stated in the rejection *supra*. Regarding the vertically orientation in Baranski, this is not germane to the rejection at bar, since the primary reference already includes the horizontal orientation as claimed. Moreover, even though Baranski teaches a vertical orientation for Baranski's conveyor, it is old and well known in the art to orient the conveyor in any manner suitable for conveyance of the work. This includes both vertical and horizontal. In any event, it is not Baranski that is being modified by Chamber's teachings but the other way around. Applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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[1] Request for Reconsideration, Paper No. 21, p. 2, ll. 1-4.

advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (703) 308-0501. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (703) 308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

Charles Goodman
Patent Examiner
AU 3724

cg
April 8, 2002